

## Message Text

PAGE 01 STATE 204542 TOSEC 100228

61

ORIGIN EB-07

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NSCE-00 CCO-00 NSC-05 /049 R

DRAFTED BY EB:RGOLD/E:DWOOD

APPROVED BY E:CWROBINSON

L:SSCHWEBEL T: CMAW

EB: TOENDERS

NEA:SSOBER S/P: SLEWIS

D:KPENDLETON (SUBS)

ARA:AFISHLOW

S:JCOVEY

S/S :RKUCHEL

P:PMARTINEZ

----- 107124

O 272238Z AUG 75 ZFF4

FM SECSTATE WASHDC

TO USDEL SECRETARY IMMEDIATE

C O N F I D E N T I A L STATE 204542 TOSEC 100228

E.O. 11652:GDS

TAGS: ENRG, EXPRO, KU, SA, VEN

SUBJECT: EXPROPRIATION OF US OIL COMPANIES:ACTION  
MEMORANDUM(S/S 7517066)

FOR THE SECRETARY FROM ROBINSON AND ENDERS

THE FACTS:

1. NEGOTIATIONS FOR THE SALE TO SAUDI ARABIA AND KUWAIT OF US OIL COMPANIES OPERATING THERE ARE FAR ADVANCED. UNDER VENEZUELAN LAW, JUST ENACTED, THE OIL COMPANIES OPERATING THERE WILL BE NATIONALIZED BY DECEMBER 31 WITH OR WITHOUT GOVERNMENT-COMPANY AGREEMENT; SOME NEGOTIATION THERE WITH THE LARGEST COMPANIES HAS  
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PAGE 02 STATE 204542 TOSEC 100228

ALREADY OCCURRED.

2. THE GOVERNMENTS ARE OFFERING PAYMENT ONLY OF NET BOOK VALUE FOR PHYSICAL INSTALLATIONS (REPLACEMENT VALUE

IS FAR HIGHER)AND NOTHING FOR CONCESSION RIGHTS, RUNNING TO END OF CENTURY IN MIDEAST AND EXPIRING IN VENEZUELA BETWEEN 1983 AND 1996, WHICH WOULD BE OF ENORMOUS VALUE IF THE CONCESSIONARY GOVERNMENTS WOULD OBSERVE THEIR TERMS.

BY ITSELF, THIS PAYMENT WOULD BE MINOR COMPARED TO THE VALUE OF THESE COMPANIES. BUT THE GOVERNMENTS ALSO ARE OFFERING NEW CONTRACTS FOR FURTHER OPERATIONS WHICH, THROUGH DISCOUNTS FOR OIL AND FEES FOR SERVICES, COULD ADD UP TO ADEQUATE COMPENSATION AS THE COMPANIES SEE ' (ASSUMING FULFILLMENT OF THE CONTRACTS), EVEN IF SULH COMPENSATION WOULD NOT BE THE FULL COMPENSATION WHICH THE USG IN PRINCIPLE MAINTAINS TO BE REQUIRED BY INTERNATIONAL LAW.

3. IF THE COMPANIES SETTLE ON THIS BASIS WITHOUT RESERVING THEIR RIGHT TO A SETTLEMENT REFLECTING THE GOING BUSINESS VALUE OF THEIR ENTERPRISES, THEY WILL QUITE PROBABLY HAVE WAIVED THEIR CLAIMS TO COMPENSATION FOR WHAT THEY ARE NOW SURRENDERING, WHETHER OR NOT NEW CONTRACTS ARE HONORED FOR THE PERIOD SPECIFIED. THIS WILL ALSO APPLY TO ANY CLAIMS THE US GOVERNMENT CAN EVER ESPOUSE ON THEIR BEHALF AND ITS OWN.

4. GULF APPEARS TO BE CONSIDERING RESERVING ITS RIGHTS IN VENEZUELA BUT BELIEVES IT WILL NOT BE SUCCESSFUL UNLESS CREOLE TAKES A SIMILAR APPROACH.

THE ISSUES:

THE BASIC ISSUE IS WHETHER AND TO WHAT EXTENT DIVERGENCE BETWEEN PRIVATE AND NATIONAL INTEREST SHOULD LEAD THE US GOVERNMENT TO PLAY A ROLE IN THE ON6OD6 NEGOTIATIONS BETWEEN THE COMPANIES AND THE HOST GOVERNMENTS.

1. WHILE RECOGNIZING THAT THE COMPANIES WILL NOI  
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PAGE 03 STATE 204542 TOSEC 100228

BE ABLE TO NEGOTIATE SETTLEMENTS CONSISTENT WITH THE PRINCIPLE OF FULL COMPENSATION, WE COULD ENCOURAGE THE COMPANIES TO SEEK AS MUCH COMPENSATION AS THEY PRACTICALLY CAN EXTRACT, AND, WHERE IN THEIR VIEW ADEQUATE COMPENSATION IS NOT FORTHCOMING, TO PURSUE AS APPROPRIATE LOCAL AND ARBITRAL REMEDIES TOWARDS THAT END.

-- MAY STRENGTHEN THE COMPANIES' BARGAINING STANCE IF THEY FEEL US GOVERNMENT WILL SUPPORT THEIR CLAIMS.

-- MAY, HOWEVER, POSSIBLY TEND TO MAKE THE COMPANIES INTRANSIGENT WITH THE RESULT NO SETTLEMENT IS REACHED,

NO COMPENSATION IS RECEIVED, NO CONTINUING PARTICIPATION IN THE OIL INDUSTRY RESULTS, AND UNRESOLVED CLAIMS ?OWL THE POLITICAL ATMOSPHERE.

2. WE COULD SUGGEST TO THE COMPANIES, WHERE THEY ARE ARRANGING NEW CONTRACTS FOR CONTINUING OPERATIONS (AS THEY ARE IN VIRTUALLY ALL CASES), THAT THEY TRY TO TIE THE WAIVER OF THEIR CLAIMS TO FULL PERFORMANCE OF THESE CONTRACTS BY THE HOST GOVERNMENTS.

-- IF AGREED, MIGHT ENCOURAGE HOST GOVERNMENTS TO HONOR THE NEW CONTRACTS. ENCOURAGEMENT WILL BE NEEDED, IN VIEW OF RECURRENT VIOLATION BY CONCESSIONARY GOVERNMENTS OF PAST AND CURRENT CONTRACTS.

-- SUCH A RESERVATION OF COMPANY CLAIMS WOULD AUTOMATICALLY PRESERVE THE RIGHT OF THE US GOVERNMENT TO ASSERT SUCH CLAIMS FOR ADEQUATE COMPENSATION AT A FUTURE TIME. ASSERTION OF SUCH IMMENSE CLAIMS BY USG COULD PROVIDE VALUABLE LEVERAGE AGAINST OPEC, E.G., BY FURNISHING LEGAL GROUND FOR TAKING OF OPEC INVESTMENTS IN US.

-- COMPANIES MAY NOT WISH TO SEEK TO RESERVE THEIR CLAIMS BECAUSE THEY BELIEVE DOING SO MIGHT BE PREJUDICIAL TO ACHIEVING A SATISFACTORY CONTINUING RELATIONSHIP WITH THE HOST GOVERNMENT.

CONFIDENTIAL

PAGE 04 STATE 204542 TOSEC 100228

-- THE HOST GOVERNMENTS NEED THE COMPANY SERVICES THEY ARE CONTRACTING FOR AND SHOULD HAVE LITTLE INCENTIVE TO BREAK THE CONTRACTS. INDICATIVE OF THEIR DEPENDENCE ON THOSE SERVICES, THEY HAVE NOT ATTEMPTED TO MAKE ALTERNATIVE ARRANGEMENTS DURING THIS NEGOTIATING INTERIM. THEY COULD DO SO IN FUTURE ONLY AT SEVERE COST.

3.. WE COULD PRESERVE THE US GOVERNMENT'S RIGHTS TO RAISE CLAIMS IN THE FUTURE, WHERE THE COMPANIES DO NOT RESERVE THEIR RIGHTS UNAMBIGUOUSLY, BY APPROACHING THE HOST GOVERNMENTS, WELCOMING THE SETTLEMENTS AND NEW CONTRACTS FOR FUTURE COMPANY OPERATIONS, AND STATING THAT THE US GOVERNMENT RESERVES ITS RIGHTS SHOULD THE CONTRACTS NOT BE CARRIED OUT.

-- MIGHT ENCOURAGE THE HOST GOVERNMENTS TO HONOR THE CONTRACTS.

-- IF THE HOST GOVERNMENTS RENEGED, WOULD GIVE THE US GOVERNMENT IMMENSE CLAIMS THAT MIGHT ONE DAY PROV IMPORTANT POLITICAL, ECONOMIC, AND LEGAL LEVERAGE AGAINST

OPEC.

-- WOULD OFFEND HOST GOVERNMENTS, COULD IMPAIR OUR RELATIONS WITH THEM, AND POSSIBLY JEOPARDIZE SETTLEMENTS ALREADY CONCLUDED, TO PRESERVE PROBLEMATICAL LEGAL RIGHTS.

4. WE COULD CONTINUE TO MONITOR THE SITUATION CLOSELY, RELYING FOR THE TIME BEING ON THE COMPANIES TO NEGOTIATE SETTLEMENTS WHICH ENABLE THEIR CONTINUING PARTICIPATION IN THE OIL INDUSTRIES.

-- COMPANIES, HOST GOVERNMENTS AND THE USG ALL HAVE AN INTEREST IN REACHING A SATISFACTORY SETTLEMENT BASED IN MAJOR PART ON A MUTUALLY PROFITABLE ONGOING RELATIONSHIP. US GOVERNMENT APPROACH TO THE HOST GOVERNMENTS, OR EVEN CONFIDENTIAL EXCHANGES WITH THE COMPANIES, COULD IMPEDE, RATHER THAN IMPROVE, THE SETTLEMENT PROCESS.

CONFIDENTIAL

PAGE 05 STATE 204542 TOSEC 100228

-- EXCLUDING THE CONTRACTS, THE SETTLEMENTS WILL BE DERISORY IN AMOUNT, AND WITHOUT A CLEAR RESERVATION BY THE COMPANIES OR THE US GOVERNMENT, CLAIMS OF IMMENSE VALUE WOULD BE SACRIFICED SHOULD THE HOST GOVERNMENTS FAIL TO PERFORM THE NEW CONTRACTS.

VIEWS IN THE DEPARTMENT ON THE ISSUES:

ARA WANTS NO US GOVERNMENT ROLE IN THE NEGOTIATION AT THIS TIME WHEN NEGOTIATIONS FOR CONTINUED INVOLVEMENT BY US COMPANIES IN THE OIL INDUSTRIES OF THESE COUNTRIES APPEAR TO BE PROGRESSING (4 ABOVE). IT MAINTAINS IT CAN ONLY DO HARM.

NEA JOINS L AND EB IN SUPPORTING US GOVERNMENT CONSULTATIONS WITH AND ENCOURAGEMENT TO THE COMPANIES (1 AND 2 ABOVE), BUT OPPOSES INTERVENING NOW WITH THE HOST GOVERNMENTS (3 ABOVE) BECAUSE IT BELIEVES IT WOULD GRATUITOUSLY DAMAGE RELATIONS WITH THEM WITHOUT CORRESPONDING LIKELY BENEFITS.

L AND EB FAVOR APPROACHING THE HOST GOVERNMENTS AT AN APPROPRIATE STAGE (3 ABOVE) TO PRESERVE CLAIMS, FOR POSSIBLE FUTURE USE, TO VAST AND VALUABLE ASSETS THAT MIGHT OTHERWISE BE GIVEN UP FOR NOTHING OF VALUE AT ALL.

S/P REGARDS USG ACTION (1-2 ABOVE) AS PREMATURE NOW. ANY SUCH DECISION PRESUPPOSES AN EMPIRICAL ANALYSIS OF ECONOMIC COSTS AND BENEFITS, SHORT- AND LONG-TERM; OF ALTERNATE COMPENSATION FORMULAE; AND AN ANALYSIS OF ALTERNATIVE WAYS IN WHICH GOVERNMENT

MONITORING AND POSSIBLE INVOLVEMENT IN THE NEGOTIATIONS  
COULD BE CARRIED OUT.

UNDER SECRETARY ROBINSON SUPPORTS 1 AND 2 ABOVE,  
BUT EMPHASIZES THAT THE COMPANIES, NOT THE US GOVERNMENT,  
SHOULD DETERMINE WHAT IS ADEQUATE COMPENSATION, THE  
VALUE OF A CONTINUING RELATIONSHIP, AND THE BEST WAY OF  
ASSURING CONTINUATION OF THIS RELATIONSHIP. (NEA SHARES  
THIS VIEW.) HE SEES PROBLEMS IN THE US GOVERNMENT'S  
RESERVING ITS RIGHTS (3 ABOVE) THOUGH HE WOULD NOT  
CONFIDENTIAL

PAGE 06 STATE 204542 TOSEC 100228

EXCLUDE THIS POSSIBILITY IF CERTAIN ASPECTS OF DOING SO  
ARE CLARIFIED, AND A CLEAR DETERMINATION WAS MADE THAT  
THE POTENTIAL VALUE OF CLAIMS OUTWEIGH ANY ADVERSE  
POLITICAL REACTIONS CAUSED BY RESERVING THEM.

UNDER SECRETARY MAW SUPPORTS THE L AND EB POSITION  
AS MINIMAL STEPS (1-3) BUT WANTS STUDY OF FURTHER STEPS  
TO "ASSURE THAT ENCOURAGEMENT OF INTERNATIONAL INVEST-  
MENT REMAINS A VIABLE INTERNATIONAL ECONOMIC POLICY  
FOR THE US." MR ROBINSON SUPPORTS THIS SUGGESTION  
PROVIDED IT GOES WELL BEYOND "DEFENSE OF PRIVATE  
INVESTMENT IN THE TRADITIONAL PATTERN" AND IS SENSITIVE  
TO THE SPECIAL CONDITIONS IN EACH CASE.

DEPUTY SECRETARY INGERSOLL AGREES WE SHOULD CONSULT  
WITH THE COMPANIES AND RESERVE A RIGHT TO ESPOUSE CLAIMS  
SHOULD THE HOST GOVERNMENTS LATER RENEGE ON THEIR AGREE-  
MENTS. HOWEVER, HE AGREES WITH MR. ROBINSON THAT CERTAIN  
QUESTIONS MUST BE ADDRESSED (SUCH AS, WHICH PARTY IS  
RESPONSIBLE, AND WHAT IS THE MEASURE OF DAMAGE, IF THE  
CONTINUING RELATIONSHIP IS TERMINATED PREMATURELY)  
BEFORE WE DECIDE TO APPROACH THE HOST GOVERNMENTS  
OFFICIALLY.

DECISION:

1. ENCOURAGE THE COMPANIES TO SEEK AS MUCH COMPENSA-  
TION AS THEY PRACTICALLY CAN EXTRACT, AND, WHERE IN  
THEIR VIEW ADEQUATE COMPENSATION IS NOT FORTHCOMING, TO  
PURSUE AS APPROPRIATE LOCAL AND ARBITRAL REMEDIES  
TOWARD THAT END. APPROVE. DISAPPROVE.

2. SUGGEST TO THE COMPANIES, WHERE THEY ARE  
ARRANGING NEW CONTRACTS FOR CONTINUING OPERATIONS  
(AS THEY ARE IN VIRTUALLY ALL CASES), THAT THEY TRY TO  
TIE THE WAIVER OF THEIR CLAIMS TO ADEQUATE COMPENSA-  
TION TO FULL PERFORMANCE OF THESE CONTRACTS BY THE  
HOST GOVERNMENTS. APPROVE. DISAPPROVE.

3. WHERE THE COMPANIES DO NOT RESERVE THEIR RIGHTS

UNAMBIGUOUSLY, APPROACH THE HOST GOVERNMENTS, WELCOMING  
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PAGE 07 STATE 204542 TOSEC 100228

THE SETTLEMENTS AND NEW CONTRACTS FOR FUTURE COMPANY  
OPERATIONS, AND STATING THAT THE USG RESERVES ITS  
RIGHTS SHOULD THE CONTRACTS NOT BE CARRIED OUT.  
APPROVE. DISAPPROVE.

4. CONTINUE TO MONITOR THE SITUATION CLOSELY,  
RELYING ON THE COMPANIES TO NEGOTIATE SETTLEMENTS WHICH  
ENABLE THEIR CONTINUING PARTICIPATION IN THE OIL  
INDUSTRIES. APPROVE. DISAPPROVE.

5. STAY OUT OF THE NEGOTIATIONS NOW, PENDING  
AN EMPIRICAL ANALYSIS OF THE SHORT AND LONG TERM  
BENEFITS OF ALTERNATIVE WAYS IN WHICH GOVERNMENT  
MONITORING AND POSSIBLE INVOLVEMENT IN THE NEGOTIATIONS  
COULD BE CARRIED OUT. APPROVE. DISAPPROVE.

CLEARANCES: T - MR. MAW; NEA; ARA; L; EB; S; D; P; S/P.

INGERSOLL

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